

NO. 47075-6-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

TRAVIS THOMPSON,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR MASON COUNTY

The Honorable Amber L. Finlay, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The sentencing court imposed discretionary legal financial obligations without considering Thompson's present or future ability to pay them.

2. The pre-printed finding in the judgment and sentence that Thompson has the current or future ability to pay legal financial obligations is erroneous.

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

Whether the trial court abused its discretion when it imposed discretionary legal financial obligations on Thompson without considering Thompson's individualized present or future ability to pay them?

C. STATEMENT OF THE CASE

The Mason County prosecutor charged Travis Thompson with felony violation of a no-contact order and residential burglary. CP 34-35, 36-37. Both were alleged domestic violence offenses. CP 34-35, 36-37. A jury heard Thompson's trial.¹ RP² 20-164. They found guilt on the no-contact violation but not as a domestic violence offense. CP 31, 33. An irregularity on the residential burglary verdict form caused the court to declare a mistrial on that count. CP 30; RP 172-180. Thompson

¹ Thompson was tried on the first amended information. CP 34-35; RP 38-39.

² This appeal has a single volume of verbatim.

subsequently pleaded guilty to the residential burglary as a domestic violence offense. CP 20-29; RP 185-88.

The court held one sentencing hearing. RP 190-99. It imposed 33 months for the no-contact violation and 22 months for the residential burglary. CP 7; RP 195. The court ordered Thompson to serve 12 months of community custody. CP 8; 196.

The court also imposed discretionary legal financial obligations with no consideration for Thompson's present or future ability to pay them. CP 9-10; RP 196-97. Thompson did not object. RP 197-99.

Thompson appeals all portions of his judgment and sentence. CP 3.

D. ARGUMENT

THE COURT VIOLATED STATUTORY MANDATE IN FAILING TO CONSIDER THOMPSON'S ABILITY TO PAY DISCRETIONARY LEGAL FINANCIAL OBLIGATIONS.

The court ordered Thompson to pay these discretionary legal financial obligations (LFOs): (1) \$30.08 witness costs; (2) \$470 sheriff service fees; (3) \$250 jury demand fee; and (4) \$1,125 court-appointed attorney fee.³ CP 9-10. The court erred in imposing these LFOs because

³ The court also ordered a \$500 victim assessment, a \$200 criminal filing fee, and a \$100 DNA fee. CP 9. Those fees are not at issue on appeal because they are mandatory. *State v. Lundy*, 176 Wn. App. 96, 102, 308 P.3d 755 (2013).

it failed to make an individualized inquiry into Thompson's current and future ability to pay them.

The court may order a defendant to pay costs under RCW 10.01.160. However, the statute also provides "[t]he court shall not order a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose." RCW 10.01.160(3).

A trial court has a statutory obligation to make an individualized inquiry into a defendant's current and future ability to pay before the court imposes legal financial obligations. *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680, 683 (2015). The record reflects no consideration here. RP 170-72.

In the judgment and sentence, this pre-printed, generic language appears:

2.5 Legal Financial Obligations/Restitution. The court has considered the total amount owing, the defendant's present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. (RCW 10.01.160).

CP 7.

Thompson challenges this finding on the ground that the court did not consider his individual financial resources and the burden of imposing such obligations on him. The boilerplate finding regarding ability to pay lacks support in the record. RP 171-72.

Further, “the court must do more than sign a judgment and sentence with boilerplate language stating that it engaged in the required inquiry. The record must reflect that the trial court made an individualized inquiry into the defendant’s current and future ability to pay.” *Blazina*, 344 P.3d at 683. The court failed to follow statutory mandate in imposing the legal financial obligations. The remedy is a new sentence hearing. *Id.*

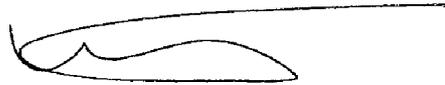
The issue is ripe for review. *Blazina*, 344 P.3d at 683. And although defense counsel did not object, an appellate court may reach this error consistent with RAP 2.5. *Id.* at 682. Thompson requests this Court reach the merits. The LFO system is broken.⁴ *Id.* at 683. It will not be fixed until appellate courts reach the merits of these claims and send cases back for resentencing thereby sending a clear signal to trial judges about the importance of individualized inquiry into ability to pay legal financial obligations.

⁴ Problems associated with LFOs imposed against indigent defendants include increased difficulty in reentering society, the doubtful recoupment of money by the government, and inequities in administration. *Blazina*, 344 P.3d 680, 684.

E. CONCLUSION

The trial court should also hold a hearing to determine Thompson's individualized ability to pay LFOs.

Respectfully submitted this 23rd day of June 2015.

A handwritten signature in black ink, appearing to read "Lisa E. Tabbut", written over a horizontal line.

LISA E. TABBUT/WSBA 21344
Attorney for Travis Thompson

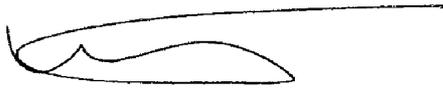
CERTIFICATE OF SERVICE

Lisa E. Tabbut declares as follows:

On today's date, I efiled the Brief of Appellant to (1) Timothy Whitehead, Mason County Prosecutor's Office, at timw@co.mason.wa.us; (2) the Court of Appeals, Division II; and (3) I mailed it to Travis Thompson/DOC#704035, Airway Heights Corrections Center, PO Box 1899, Airway Heights, WA 99001.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed June 23, 2015, in Winthrop, Washington.



Lisa E. Tabbut, WSBA No. 21344
Attorney for Travis Thompson, Appellant

COWLITZ COUNTY ASSIGNED COUNSEL

June 23, 2015 - 4:26 PM

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